M.R.O. 1—30,000—16-10-40.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 57 Press Mist.

Dated 15-1-1957

Not to be folded or roughly handled

Confidential

1

The following Qualifications of the Answer appear to me advisable, with reference to the Replication filed by Mr Forbes, to the Interrogatories of the Plaintiff and to Mr Forbes' Letter of the 8th and 9th December to the Government of Bombay.

Answer to Interrogatory 10 (and also Interrogatories 80, 88 & 115.)

An additional Schedule

Do, comprising the property of the late Rajah, of which Mr Forbes has not taken possession, as explained by him in Para: 5 of his letter of 8th December, and in his Reply to the 15th Interrogatory should be annexed and referred to with the other schedules in these Interrogatories.

Observe that property

Mentioned in the schedule D2 is all of the same description as that comprised in D1, which the Government is willing to relinquish - ie that which has been acquired since 1799, and is

sort of its duty on the State property such as Ammunition of War - If there be any property acquired since 1799 or even the State property which it is intended to retain among the property that got possessed by the Government Officers, such property should be described in a separate Schedule D4. And in the following Paragraphs wherein the intention of the Government to give up the property in D1. is expressed to D3 should be also mentioned: while D1 should be confined with D2, where the intention to retain is expressed.

From the Viceroy's letter of 9th December (9 Secret Nos) it appears that the distinction intended to be taken by him in his letter of 17th October 1856 was not between the public and private property of the Nizam but between the property of the Nizam all of which he treated as public and the private property of the Nizam which he claimed as his own & to be dealt with as State property. The expression in his letter, and similar expressions in subsequent Paragraphs to the effect that Government were the intention of the Despatch is of either of the Governments reserved to retain possession of certain portions of the property and effects of the late Nizam such portions as formed part of the State or public property at the date of the Treaty of 1799 it should

be omitted and the Petitioner
allowed Costs: And it is
not the intention of the
Respondents or of Officers of
their Government to proceed
to Extremities against us."

And if the Honourable
Gentlemen did arrange
Indeed to make a distinc-
tion between Public and
Private Property of the Col-
lector although even that
where the Line seems to be
drawn becomes the two Classes
of Property the Answer
may stand in their respect
as it is.

Give the Name of the Late Collector of Jaipore, where that Office is Reported to

Must bear this Date 25-
for Trial at Cuttack by
Mr Dale - I confess that I
cannot answer Mr Forbes'
Query that the late Rajah
was the Member of an
undivided family - as
stated in the Petition to the
Supreme Court

although Rajah Vikramdeo Narain
may have made a Division with
his only Brother Ramcer Singh,
the Children of the former do not
absolute Sovereign and Proceed
to preclude the supposition that
the two Brothers continued to
live together as an undivided
family in the sense attached
by Hindoos to that Term -
The Deed taken at Cuttack
however on the occasion of Hindoo
Succession may differ
from that which prevailed there,
and if Mr Dale thinks it
desirable this Paragraph
after Letter that Office
may be objected on of Jeypore
and that neither Deputee
nor Respondent had Power
to say that the said Rajah
Jeypore being Rajah and
absolute Sovereign was not
in fact joint in estate with
his only Brother Ramcer Singh
but that the Respondent to
believe that the actual division

were made between them since
by the said Rajah on his
accession to the Musnud
assume all the property
of the State &c &c endeavouring
being necessary and in
the same submissive manner
of his Successors as joint
in Estate with the said Annee
Vaigh though declared
division were made between
them: and may submit whether
under the circumstances
aforesaid the said Rajah
Seevajee was not duly
entitled to maintain
the Defendants declare and
admit he was not a Member
of any undivided Hindoo
family.

Here again Mr Dale Jada 25/ap.
will be better able than I am
to judge of the validity
according to the Hindoo
law and usage of the Madras
School of the Marriage of the
17 Brahmin & the Rajah
Seevajee the admission in

perhaps at present not quite
sufficiently guarded and
therefore whether the validity
of the Marriage be considered
at Madras beyond dispute
the Answer may omit the
words and the Defendants
are informed and believe they
they submit the same to for
be it is matter of law & the
judgment of this Honorable
Court July — and after stating
the fact of the Marriage may
conclude — And the Defendants
are informed and believe
that the said Marriage took
place duly so far as the
ceremonies performed thereat-
were concerned — but whether
or not the said Marriage or
any or which of them were
due or lawful according
to Hindoo law, these Defen-
dants submit as matter of
law to this Honorable Court

Jada 31. If Rajah Seevajee
in fact setting up a title, of
which the Government of
Madras or the Collector have any

knowledge, and which falls within the description of private property according to the meaning of the term granted and in any opinion of Decided Last, i.e. property either derived from sources other than the Rajahs share of the Revenue or than property that was public before 1799 or property however derived applied to strictly private purposes wholly unconnected even with the Endowed Cho and Pageantry of such a State as before the Paragraph should be modified by an admission of the existence of such property and a general description of it in a schedule D5 x

The Paragraph may then commence thus:

"Besides the property hereinbefore particularly mentioned, the Defendants the Defendants are entitled and believe that the said Maha Seroojee

x This schedule should be marked D4 unless there be two schedules of property sent taken possession of, referred to in Para 10 - the remarks on that paragraph above -

And so the schedule next referred to as D6 until the D5 if there be only one schedule D5 referred to in Para 10. But it will be more convenient to the

remaining Remarks to speak of each schedule, as if the full number of possible schedules were filled up; and I omit to leave the Counsel Duke to renumber the schedules according to the numbers that actually become necessary.

x Mention each subject of these Articles to fall within the Category here referred to. D4 D5

xx If the alteration mentioned in the next page is introduced this will form in the schedule, duly numbered and marked D6, & D6'

was at the time of the death [illegible] proceeds of land entitled as of his own right, but whether or not he was in private property or distinct from or independent of the property rights claims or privileges appertaining or belonging to the Raj of Tanjore that Defendants do not know and cannot say more as before appears, be certain estate consisting of horses caddy jewels cash silver Plate gold coffee and brass utensil cloth furniture books arms Equipages waggons elephants horses and Carriage cattle Cattle wild animals birds and other riches, a best schedule to which so far as these Defendants have any knowledge or perfect the same in the schedule hereto annexed and marked D5 xx which were purchased or acquired by the said Raja or Serajee from his portion of the

Revenue of the State become
by him or aforesaid, but
which were used and applied
by him or the Governors
of the State for keeping
up the Head or Pageantry
thereof, but for his own private
purposes so far as it is
possible to distinguish
between the Public and
Private purposes of a
Sovereign actuate as the
said Rajah Veerapa was.
That these Defendants say
that they have not nor has
their said Commissioner
or Collector nor has nor
has any or any one of their
Officers Agents or Servants
so far as the Defendants
are aware and believe taken
possession of or interfered
with any of the said property
(so. Situate as last aforesaid)
and save as aforesaid the
said Commissioners of the
Defendants for Forties &
Contains as before to the end
of Para 9 1/2.

And forasmuch that the Defendants
have taken possession

of some of the property therein
described, though subject to
his reply to Interrogatory 16,
and from the 6th Day of his
letter of 8th December that
all property of this description
(if indeed the property there
referred to by him do answer
this description) has been
kept untouched. But if he
has taken possession of any
property of this description,
the foregoing passage cannot
be thus modified.

At the Point marked X
another Schedule D6 should
be introduced which should
comprise the property thus
taken possession of: while
D5 comprises that kept
untouched. And at the
point marked B. the following
words should be inserted.
And these Defendants
have been informed and
believe that their Commissioner
the said Mr Forbes and their
said Collector and Officers
and servants did take
possession of such of the
said property so situated

(6)

Page 56. After the words towards the end of the Paragraph of which you are made Officers & Agents and relevant to be proved have" insert the words "and at the time of the said Pagin Paragraph death and for the space thereby" before the word "Libel or Petition"

Page 57. After the words "and the said Defenders and Officers of the said Defenders" insert for the Pursuer and in the Relief aforesaid Declare" before the words "but have not yet completed" before the words "and the said Making full and particular

To the words Defenders here to annexed add the words A. B. C. D. Dr. Dr. and Dr. if there be a Schedule Dr. And in the Pursuers Passages referring to Parties Taken Possession of by the Defenders strike out the words Dr. Dr. and Dr. if there be a Dr.)

Para 38
to Extinguish

as soon as the Lands
the Land of the Ryots
and of the Water appurtenant
and before the same
shall be set forth
which commutation must
the Settlement Officer
Deputed to be able to
form any Opinion or belief
respecting such Value but
they are informed and believe
that the greater part of
such Ryots have no
ascertainable Value and
other than such
Cultivable Cattle
Carts horses
Ponies and Cattle are
often valuing and
uncertain Value, and
that it is therefore impossible
to form a certain or correct
Estimate of the Real Value,
or to do more than make
a Conjectural Approximation
to the same in Pounds
Rupees which the Deputy
Lands have according
done in the Schedules
hereto

And the Deputy Lands have
in the Schedules hereto annexed
"D3 D4 & D5 respectively
"set forth a like account
"of all other Property of the
"said Rajah Seevajee known
"to them & exist and not
"recovered by them with
"the Reasons why they have
not been so recovered
and the Value thereof.

And they continue to the
end of the Paragraph as before

In the Schedules hereunto
D3, D4 & D5, the Reasons
for not having taken
possession of the several
classes of Property therein
described as stated by
the Deputy Lands should be given.

See Mr Forbes' Reply to Para 15.

Para 41.
(Ans 16.)

The words "and have
always intended" should
be Retained or omitted
according to the Rule
laid down in the Note to
Para 18

Para 45.
(Ans 18.)

And so in the words
"and never had" in
Para 45.

Care cannot be taken in adapting the Reference to the Particulars Schedule to know which comprise Jewels &c of any specific value.

Para 45 Subs 18

After the words "from" "mentions matters" insert "and not from any Reasonable doubt as to her being the party entitled to receive or possess the same" and then continue "or otherwise at all the only property which these Defendants withhold from the Plaintiff being [as these Defendants believe] property of State.

Para 46 Subs 19.

After the words "Schedule hereto annexed marked E" set forth a full and true list and [illegible] containing [illegible] and true particulars of [illegible] and which [illegible] of the said documents which they are ready to produce" to the end of the Paragraph.

Subs 19

Omit Reference to the last Paragraph of the Said Schedule and insert [illegible]

Para 49 at the end of the present Para: 48-

"Besides the above documents the Defendants have taken into and have now in their possession divers books accounts vouchers entries and writings being the public accounts and vouchers of the State or Raj of Sanjore from the year & the death of the late Rajah Serfojee a general description whereof being the best description thereof that these Defendants are able to give without any great delay and without rendering their answer very burdensome to the Plaintiff as well as to the Defendants is set forth in the Schedule hereto annexed and marked H. But these Defendants say that the said accounts extend over the period of years in the whole and are extremely voluminous and are written in the language and that the perpetuation of a complete and particular list thereof would occupy several months and would be productive

of no Real benefit as none of the said accounts vouchers or entries are at all material to the matters in issue in this suit. And these Defendants say that the several last mentioned documents also relate to matters of State the production whereof would be contrary to good policy. Therefore these Defendants submit as in the 48th Paragraph of their Answer that they are not bound, and they decline to produce or disclose the contents of the documents mentioned in the said Schedule hereto marked Ff. 50 "And save as aforesaid and as in the said Schedule hereto annexed Ff, Ff, G and Ff respectively these Defendants say that they have no other Papers Books or Documents or Accounts or any of them relating to the matters in issue in this cause or that could lead to the discovery of the same or any of them

vouchers or any books letters papers documents Codicils copies of letters agreements lists of jewels Inventories vouchers Memoranda entries or writings by which the truth of any of the matters in the said Bill mentioned appear if the same were produced.

57. Para 49 will follow here.

It will be seen by reference to any Opinion of the 5 December last that I do not concur with the Forces in the Remarks contained in the 3rd & 4th Paragraphs of his letter of the 9th December and that I do concur in the Remarks therein contained on 1st of the Date in the clear and able case drawn up by him for my opinion.

I also differ with much deference from the Decree Petition in the 9th Para

of that letter as to the effect of the decision that the Rajah left no heir - the decision of the Government only was that no heir was left, or was entitled to succeed to the Raj: But the decision did not affect the Right of the heir of the Petition of the Rajah to succeed to his Property, if any, not pertaining to the Raj:

G Melvill
6 Jan[y] 1857

The following modifications of the answer appear desirable - with reference to the affidavit in support of the injunction

In Para: 13 of the affidavit on which the injunction was granted it is stated that the Company have taken possession of four articles of jewellery. One of these is stated to have been acquired by the late Rajah by gift from the father of his first wife - another is stated to have been acquired by the Rajah by gift from his own father Rajah Sefojee - the third is stated to have been purchased by the late Rajah and given by him to the Petitioner - Of these statements the first contradicted allegations of fact could be proved by the Plaintiff in the Record but the second - the fact given by Sefojee could be proved by the Petitioner in the female line, while that given

to the Plaintiff would belong to her in her own right. As regards the two principal articles mentioned in the affidavit it is quite consistent with the Plaintiffs statements that those articles were held and possessed by the late Rajah as jewels of State. It would therefore only be necessary to add to the 9th Para: of the answer a statement to the following effect, "The said Rajah Sir [illegible] while reigning Sovereign of Tanjore so afterwards did became possessed by gift of certain diamond jewels which were also duly sworn and affixed by seals for the purpose of ascertaining the ordinary State and Regalia as such Sovereign & for purposes connected with such State and Dignity such Regalia included the Crown of the Seal of the said Province of Tanjore which Crown & Seal were & are [illegible]

(although they will undoubtedly fall within the Category of those which the Government has decided on giving up -)

in Schedule D1. If on the other hand there is reason to suppose that the statements in the 13 Para: of the affidavit are not founded on fact, there will be no necessity for any alteration in the answer as all the Jewels would be included in either Schedule C or Schedule D2.

In Para: 12 of the affidavit it is stated that certain Horses Camels Elephants and Carriages and also some other articles have been sold by the Court of Tanjore & if this be in fact the case it will be necessary to modify the latter part of Para: 9 of the answer after the words "or disposed of" and insert the articles specified and enumerated in the Schedules — hereto annexed and marked D3 which articles have been sold with the sanction of the Government of Madras for the prices specified in the said annexed Schedules and which prices

so far as these Defendants
are aware) represent the full
value of the same Articles -
And these Defendants say
that the said Testamentary
Articles were sold by reason
that / Here state Generally
the cause of Sale / And these
Defendants say that no
part of the property of the
said late Royal Servants
has been destroyed by them
or by their Servants or
Officers save and except
as Plaintiff complains of &

Protested
6 Jun 1859

Calcutta 23 Dec. 1836

Gentlemen

I have the honor to
forward to the Secretary of the Government
in the Judicial Department, and the
Secretary, to the Law Commission, under
the orders of the Right Honble the Governor
General in Council, the Report of the Commissioners
appointed by the Government of Bengal, with
the Draft of a Code of Criminal Procedure
which they have prepared, in pursuance of
the Resolution of the Right Honble the Governor
General in Council, dated the 17th of August 1835,
and the Draft of a Code of Criminal Procedure
which they have prepared, in pursuance of
the Resolution of the Right Honble the Governor
General in Council, dated the 17th of August 1835,
and the Draft of a Code of Criminal Procedure
which they have prepared, in pursuance of
the Resolution of the Right Honble the Governor
General in Council, dated the 17th of August 1835,

Sup: Court 22nd Dec. 1856.

G. F. Edmonstone Esqre

My dear Edmonstone,

I do not think the Injunction should at all affect our course of action. — It affords an additional ground for despatching the answer to-day by the steamer tomorrow; as it will be important for the Government if it finds itself harassed by the Injunction to file the answer at once, and upon that to move to dissolve the Injunction. — It is impossible without seeing the terms of the order to say how far the Govt will be hampered in its action by the Injunction. But I can scarcely think that the order extends to any property that was really State property and if it applies only to private property, it will not at all embarrass or trammel the Government. Indeed as far as the property which has been determined to seize upon is concerned, the injunction may turn out to be of convenience, as relieving the Govt from embarrassments as to the best way of proving up the property. — Indeed the order must have been granted upon an exparte statement

J

of the facts as stated in the Bill—
treating the property as private & particular
estate of Savage; and not bringing
before the Court at all prominently his
position as a Sovereign: Indeed—it
will not at all influence the ultimate
decision as to the jurisdiction or as to
any question in the suit.—

It will be impossible to give
any fuller advice than this as to the
course that should be taken in dealing
with the injunction until we see the
order and the grounds on which it was
granted.—

Very sincerely yours,
J. W. Ritchie—

The opinion will be copied by this
evening or early tomorrow morning.
It may perhaps be useful for the
purposes of Sir Dale to send some of the
remarks on on the answer I sent you
this morning, though not all—and if you
will send them me, I will have them
copied.—But I do not think it at all
necessary to send any part of them.—

Supreme Court 22d Dec. 1856.

A. J. Edmonstone Esqre

My dear Edmonstone.

I do not think the Injunction should at all affect our course of action. It affords an additional ground for dispatching the Answer &c. by the Steamer tomorrow, as it will be important for the Government if it finds itself harassed by the Injunction to file the answer at once, and upon that to move to dissolve the Injunction. It is impossible without seeing the terms of the order to say how far the Government will be hampered in its action by the Injunction. But I can scarcely think that the order extends to any property that was really state property and if it applies only to private property, it could not at all embarrass or prejudice the Government. Indeed so far as the property which it has been determined to give up is concerned, the Injunction may turn out to be a convenience, as relieving the Government from embarrassments as to the best way of giving up the property. And as the order must have been

Steuart Pleaid.
Petn Enquiry &c
Answer Affid &c
Upon Affidt &c
Injn

been granted upon an exparte statement of the facts as stated in the Bill- stating the property as private and particular estate of Secunjee; and not bringing before the Court at all prominently his position as a foreign Prince- it will not at all influence the ultimate decision as to the jurisdiction or as to any question in the suit.

It will be impossible to give any fuller advice than this as to the course that should be taken in dealing with the Injunction until we see the order and the grounds on which it was granted.

Very sincerely yours
[sig?] W. Erskine

The opinion will be copied by the evening or early tomorrow morning. It may perhaps be useful for the guidance of Mr. Dale to send some of the remarks on the answer I sent you this morning, though not all. And if you will send them me, I will have them copied. But I do not think it absolutely necessary to send any part of them.

Wt. Lee & Jaipur
8p

1. I have now remodelled the answers according to the views expressed by the Right Honorable the Governor General and the Honble Members of Council in their Minutes. —

2. I may perhaps be permitted to say that while I felt it my duty to state the opinion which I had formed, and which I still after more mature consideration entertain, upon the legal rights of the East India Company in respect of the property left by the late Rajah of Jaipur, I also felt and still feel that it was not within my province to offer to the Government any remarks upon the settlement of important questions of State policy, upon which the propriety of any future steps to be undertaken must depend. — I do not therefore consider myself precluded to offer an opinion upon that question, which remains for the decision of the Govt. alone

the latter as was done in the draft answer originally prepared. — I have therefore substituted three paragraphs of a general character for the first eleven paragraphs of the original draft, which went into details that I should have thought avoidable had the Government stood upon their extreme rights, but that I now think unnecessary. —

6. I have introduced (paras: 17 & 18) the statement suggested by His Lordship at para: 5 & 6 of his first Minute, and by Mr. Peacock in his second Minute (p: 3) and have inserted (para: 18) the explanatory Memorandum of Law there suggested by Mr. Peacock. —

7. I have provided for separate Schedules as advised by Mr. Peacock in that Minute (p: 4) and have made the statement therein suggested as to the property which it is intended to relinquish (see Para: 18 & 19). —

8. The original para: 10 is omitted as suggested in that Minute as a statement of the determination of the Govt. that the state of affairs referred to is substituted for the statements that an actual lapse had taken place (para: 21).

9. The original para: 15 which Mr. Peacock proposed (p: 2 Minute) to amend (see para: 22) is omitted, the amendment being of a character which I do not think necessary. —

(as the present para: 9), in a modified form, though for a different purpose from that for which it was originally inserted. —

10. I think it important to show that no seizure of property which in the proper sense of the term, and in the sense in which ~~[illegible]~~ it would be open to the Plaintiffs advisers if their case should require it, to contend that the term used in the Bill, was private property i.e. of property either purchased from private resources of Savajee independently of the revenues of the country, or purchased avowedly for private purposes, unconnected with the inherent dependency of the Bay, and made by the Commissioners under the orders of the Government — and with this view I think it should be shown that all the property actually seized was of such a nature as not to admit of even a debatable question, which the East India Company claimed a right to decide as a question of State — whether such property was strictly

strictly speaking property of the State or not - although the Govern: ment is willing to relinquish all claim on its own account to such property or the greater part of it.

11. The Interrogatories primarily ask whether all Forbes or other officers of the Government have not seized private property of Savaji, and how the Defendants distinguish between the property seized by them from private property - The Company are bound to answer these questions fully: and confining their answers to what they now claim, but extending it to what their officers have once seized, although they may since have abandoned or may now be willing to abandon it - The best mode of answering this enquiry appears to me to be to state the nature, and in general terms the mode of acquisition and of employment by the Rajah of all the property seized, and I have accordingly so described the property, and as property which the East India Company now claim to retain as part of their Bounty, but as property

of which as being ostensibly public property of the late Rajah they were entitled to take possession as an act of government - while possessing themselves of the Raj and its appur- tenances, I do not think the state- ment as framed at all submits the question of the propriety of such taking of possession to the jurisdiction of this Court.

12 I have adopted Mr. Peacocks suggestion in omitting the words, 'in the nature of', before the words 'state property' in describing the property which the East India Company claim to retain. * I have retained those words in Para. 37, in describing the property other than that attached & declared to remain and which has been taken possession of by Mr. Forbes: - in order to distinguish such property which Mr Forbes when he took possession believed and I think on legal principles rightly believed to be 'in the nature of state property' from the purely private property of the Rajah in the sense before adverted to, which Mr. Forbes never attempted to, and as far as he was aware did not, touch.

13. I have also [para: 21] raised the point suggested by Mr Grant at the end

* Para: 16 of Answer

end of his second minute, and also by Mr. Pearce as to the jurisdiction of the Supreme Court at Madras over lands in Tanjore - But as the Act and Charter establishing the Madras Court are similar to those establishing the Calcutta Court: as the latter Court has from its first establishment hitherto held that under its charter wherever it has jurisdiction as to the person of the Defendant, it has also jurisdiction as to lands belonging to or held by him though situate beyond the limits of its local jurisdiction - and as this practice is too firmly established to be now shaken, I do not think that this objection can prevail notwithstanding the other objections to the jurisdiction fail.

14 I have adopted also the other suggestion in the last paragraph of Mr. Pearce's minute, with this exception, that I do not think it advisable to state that the Defendants are ready to dispose of the property which they do not intend to retain as the Court may direct - It would doubtless be convenient for the Company to obtain the direction of the Court as to the party entitled as the personal representative or otherwise of the Rajah to receive over the property thus given up. But I fear that this direction can only be obtained on the terms of the Defendants submitting to a decree for an account of such property as they propose thus to make over under such direction, and the objection to the jurisdiction as to such property might be thus jeopardized.

15 The object in view viz. the obtaining the opinion of the Court as to the person entitled to receive the property as representing the late Rajah - in case the Court should think it has any jurisdiction to adjudge the suit will, I think, be sufficiently attained by the Defendants consent to a direct whether the Plaintiff, as the eldest widow, is entitled to represent the Rajah in respect of strictly private property, or whether the other widows have distinct rights of succession as advised by Mr. Pearce, and as embodied in the 33rd paragraph of the present answer.

16 I have also altered paragraph 39 of the original Draft, which is

is now para: 45 of the present Draft,
by the omission of the words requiring
proof from the claimants, that the
effects which have been taken are
private and particular property,
before releasing them, as recommended
by His Lordship at the end of his
second Minute.-

17. The objection to the juris-
diction of the Court as to property
other than State Property does not
appear to stand on quite as strong
grounds as it would have stood on,
if the Government had insisted on
retaining the whole of the property
seized.- But the answer raises all
points as to the jurisdiction as
strongly as I think they can be
properly put.-

Jno. W. Ritchie,
21st December, 1856.-

Secretary's Office
Relative to the Consulate
General &c. &c. &c.
Algiers &c.
23/1/57

No 47

From G. F. Edmondstone Esquire
Secy to the Govt of Bombay

To

F. Upcroft Esquire,
Secy to the Government of
Fort St George

Dpt, Fort William 7th January 1857

Foreign Dept No 5

I am directed by the Governor General in Council to acknowledge the receipt of your despatches noted in the margin relative to the Consulate at Muscat and to forward for the information of the Right Honble the Governor in Council a copy of a letter and enclosures from the Assistant Resident at Aden on the subject.

No 809, dated 10th December 1856	
" 811, " 10th " 1856	
" 825, " 22nd " 1856	

I have the honor to be
Sir
Your most obedt Servt
G Edmondstone
Secy to the Govt of Bombay

Fort William
the 7th January
1857

Duplicate

W. H. Tobin, Esqr. Cant. 36

To

C. F. Edmonstone Esqr.
Secretary to the Government of
India,
Foreign Department.

Sir

I have the honor to acknowledge the receipt of your letter dated the 29th and 31st December last respecting the proceedings in the suit of Ramanooja Mudaly v. Lakshmi and the East India Company in the Supreme Court at Madras, with the letters and documents contained in those letters and forwarded to me for my advice or observations thereon and to offer.

2. I send on a separate sheet such remarks as occur to me with reference to the observations in the Madras Letters necessary for the further information afforded by them, and to the opinion of the Solicitor to Government, and in this letter to the Conclusions of the 8th and 9th December last, and also by the affidavits on which the

Enclosures 2 & 3 Bengal Letter dated 29th Dec. 1837.
Enclosures 4 to 7 Madras Letter dated 31st Dec. 1837.
Paras 1 to 15.

Bengal Letter
Dated 29th Dec. 1837.

Enclosures 2 & 3.

Madras Letter
Dated 31st Dec. 1837.

Enclosures 4 to 7.

Paras 1 to 15.

The East India Company v. Ramanooja Mudaly and Lakshmi.

Proceedings under the Mandamus issued in the suit of the East India Company v. Ramanooja Mudaly and Lakshmi.

Papers received from the Supreme Court at Madras.

Letter from Registrar dated 28th Dec. 1837.

Affidavit of Service.

Letter from Registrar dated 29th Dec. 1837.

Affidavit of Service.

Injunction was applied for -

3. With respect to the Injunction granted by the Supreme Court, I do not think that if granted, as I presume it was on the terms of the Notice of Motion, it can prejudice the Government in any way; as it is expressly limited to the private and particular Estate and effects real and personal left by the late Serojee, and as the Government has already determined that it will not retain any property that can within the widest interpretation of the term be deemed private or particular

4. The course taken and advised by Mr. Dale and Mr. Bryson with reference to the Injunction and the general conduct of the suit appears to me to have been in all respects correct. I quite concur in the remarks in the 3rd Paragraph of Mr. Dale's letter of 16th December and in the 2nd and last Paragraphs of Mr. Bryson's letter of the 19th December. Mr. Dale was I think perfectly right in the absence of any affidavit of Mr. Forbes and of advice from Calcutta as to the course which it had been determined to adopt as to the property, in not entering into the questions of jurisdiction, & of the distinction between public and private property of the late Rajah. The Court too after the materials before it could scarcely have done otherwise than grant the Injunction; though I do not understand why the apparently reasonable request of Mr. Dale for time to answer the affidavit should not have been granted, provided the Defendants had undertaken not to interfere further with the property until the motion could be disposed of.

5. I do not advise that any application be made to dissolve the Injunction until the hearing of the Suit, unless that hearing be unreasonably delayed by the Plaintiff in which case a motion may be made to dissolve upon the grounds the whole question of jurisdiction and of distinction between the public and private property of the Rajah will be made advantageously discussed at the hearing than upon an interlocutory application -

6. With reference to the remarks of the Chief Justice reported by Mr Bonyson, which appear to have been a general one, as to there being a distinction between the public and private property of a Sovereign the observation of Lord Brougham in the case of the Lord Advocate vs Lord Douglas 9 Clark and Finnelly p 211, 212, May be referred to in addition to the authorities before cited by me-

I may mention that I do not see on what grounds the appearance of Mr Dale as Advocate for the East India Company, while he also was acting for, and even while he held the appointment of Solicitor for the Honorable Company, could possibly have been objected. It is doubtful whether as Attorney for the Company he would not have been entitled to be heard even if not admitted as an Advocate of the Court - but having been duly admitted as an Advocate, the circumstance that he was also acting in the particular case, or even generally for the particular Client as a Solicitor, could form no legal objection to his being heard as Counsel on behalf of his Client - Any Rule of etiquette that the Bar might lay down for its own general Guidance would not be binding on the Court or on the Suitors :- And although the Rule by which the distinction between the two Branches of the Profession is kept up is generally speaking, in my judgment, a salutary One, yet where all the Members of a limited Bar are either enlisted on the other side or are unwilling or unable to appear for a Party to the suit, the Rule would become a mere appearance if it were applied so as to prevent a person otherwise duly qualified as an Advocate from being heard merely because he was that Party's Attorney as well as Counsel.

I return the original enclosure.

I have the honor to be

Sir

Your most obedient Servant

J. Littledale

Calcutta 3
6 January 1853

Advocate General

Ordered that the above
letter & Enclosures be
communicated to the Commis-
-sioners of Customs and to the
-H.M. Advocate

Jno

Read 15th Janry 1857

Copy to the Commissioners with Copy of letter & Encls. 3rd Instt.

Do Do — to H.M. Advocate with Do Do

15th Janry 1857

Read 15th Janry 1857